

Attorney Docket No. P6252US

Remarks:

Claims 1-23 are currently pending in this application.

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CENTRAL FAX CENTER****MAY 30 2007****Claim Rejections – 35 U.S.C. §112**

In the Office Action mailed January 3, 2007, claims 1-23 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. More specifically, the rejections stated that the specification as originally filed does not show support of the recognition to exclude with respect to the starch. Applicants respectfully traverse said rejection and direct the attention of the Examiner to numerous locations within the original specification in which this exclusion is not only recognized but in the advantages and necessity of such exclusion are explicitly described.

For instance, in the Summary of the Invention, an amount of casein protein is described as being replaced with, "...a combination of ingredients including an amount of non-casein protein (e.g., non-dairy protein such as vital wheat gluten) and an amount of *non-pregelatinized*, modified starch (e.g., non-pregelatinized, thermally inhibited starch)." (Page 3, Lines 5-8). At Page 5, Lines 1-5, cheese compositions of the invention, "...are classified as having an amount of casein protein replaced with a combination of ingredients including an amount of non-casein protein (e.g., non-dairy protein such as vital wheat gluten) and an amount of *non-pregelatinized*, modified starch (e.g., non-pregelatinized, thermally-inhibited starch)." At Page 7, Lines 15-17 and Lines 19-21, it states that, "...non-casein protein and *non-pregelatinized*, modified starch, in combination, can aid in providing one or more highly desirable functional, organoleptic, or nutritional properties in cheese compositions." and "...non-casein protein, in combination with *non-pregelatinized*, modified starch, can unconventionally replace an amount of casein protein..." At Page 9, Lines 12-13, it is explicitly stated that, "In particular, *non-pregelatinized*, modified starch can be used in the present invention." At Page 9, Line 18 – Page 10, Line 2, the differences between *non-pregelatinized*, modified starch and pregelatinized starch are discussed and it is explicitly noted that, "Pregelatinized starch tends to develop a higher viscosity too quickly for this application." and that, "Applicants have discovered that that a *non-pregelatinized*, modified starch that is resistant to such breakdown tends to provide suitable viscosity characteristics during processing." At Page 11, Lines 13-28, the advantageous properties of *non-pregelatinized* starch granules including thermally-inhibited and chemically modified starch granules are explicitly discussed. Finally at Page 15, Lines 15-28 it is described how the use of a "suitable amount of *non-pregelatinized*, modified starch" can allow for reduction of the amount of casein protein beyond that which is achieved with conventional means.

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As the specification makes abundantly and repeatedly clear throughout, *non-pregelatinized*, modified starch offers unique processing characteristics to the claimed invention that are not provided by pregelatinized starch. As such, Applicants respectfully assert that clear support exists for the exclusionary nature of independent claims 1, 17 and 21 and withdrawal of said rejections is requested.

Claim Rejections – 35 U.S.C. §103(a)

In the Office Action mailed August 4, 2006, claims 1-23 were again rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,937,091 to Zallie et al. in view of the non-patent reference to Magnuson. Applicants respectfully traverse said rejection.

As discussed in the preceding discussion, the pending claims are directed to Applicants' discovery that using an amount of a non-dairy protein with an amount of non-pregelatinized, modified (e.g., thermally inhibited or chemically modified) starch, advantageously provides a cheese-substitute product comparable to that of 'real' or natural cheese while using significantly less casein protein. Furthermore, the pending claims are directed to Applicants' discovery that pregelatinized starches can not be successfully used due to viscosity issues and problems that arise during processing. As discussed previously, the present claims are not directed to blends of starches but instead to starch solely consisting of non-pregelatinized, modified starch, wherein said modification may be a thermal or chemical modification.

As discussed in prior responses, Zallie et al. teaches the use of pregelatinized starch or blends of pregelatinized, debranched starches. Zallie et al. is utterly absent of any discussion relative to the presently claimed advantages of non-pregelatinized starch and every example disclosed by Zallie et al. requires at least 20% of the pregelatinized, debranched starch. (See Col. 3, Lines 7-10, Col. 4, Lines 9-17, Col. 5, Lines 31-55, Col. 7, Lines 62-64) As discussed within the present specification, use of the pregelatinized starches taught by Zallie et al. is unsuited for use in the cheese compositions of the present invention as the pregelatinized starches will immediately absorb the available free water causing an immediate spike in viscosity (See application as originally filed at page 9, lines 21-22) while also consuming the water necessary to dissolve the casein protein. Nowhere within Zallie et al. is there any discussion relative to the exclusive use and advantages of utilizing non-pregelatinized, modified starch as a casein replacement as described and taught throughout the present application and as contained in the pending claims.

Magnuson similarly fails to address the use of non-pregelatinized starches and as such, fails to cure the aforementioned deficiencies of Zallie et al.

As the Examiner has failed to cite any art disclosing the processing advantages explicitly taught and disclosed by the present application, Applicants respectfully assert that no evidence has been presented to support the assertion that that the exclusive use of non-

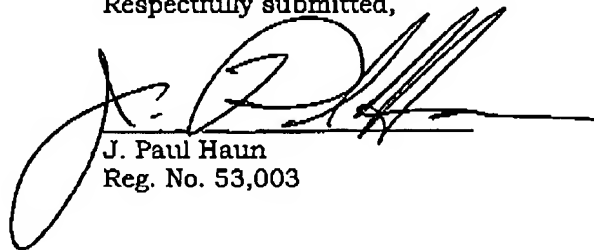
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pregelatinized, modified starches to replace casein protein is a matter of choice and well within the skill of the art. Should the Examiner maintain said rejection based on the previous reasoning, Applicants' respectfully request the Examiner indicate that Official Notice is being taken and provide documentary evidence in support thereof.

For at least these reasons, Applicants respectfully assert that Zallie et al. and Magnuson, considered either alone or in combination, fail to render the presently amended claims as *prima facie* obvious. As such, Applicants respectfully request reconsideration and allowance of the claims. Early notice of allowability is kindly requested. Please contact the undersigned if it will assist in expediting prosecution of these claims.

Please apply any charges or refunds to Deposit Account No. 16-0631 and provide notification of such transaction(s) to the address below.

Respectfully submitted,



J. Paul Haun
Reg. No. 53,003

General Mills, Inc.
P.O. Box 1113
Minneapolis, MN 55440
(763) 764-2265
(763) 764-2268 (Fax)